

HOUSE No. 401

By Mr. Fresolo of Worcester, petition of John P. Fresolo and others for legislation to establish a law enforcement bill of rights. Public Service.

The Commonwealth of Massachusetts

PETITION OF:

John P. Fresolo Joan M. Menard
SEIU - 5000 NAGE

In the Year Two Thousand and Five.

AN ACT ESTABLISHING A LAW ENFORCEMENT BILL OF RIGHTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 The Massachusetts General Laws are hereby amended by
- 2 inserting after chapter 31A, the following new chapter:—

3 SECTION 31B.

4 Section 1 (a). For the purposes of this chapter, “Law enforce-
5 ment officer” shall be defined as a sworn member of: The Massa-
6 chusetts State police, any municipal police force, the police
7 department or force of any region or county, the Office of the
8 Sheriff of any County, any state or county correctional facility,
9 any special law enforcement unit pursuant to chapter 22C.

10 Section 2. When any public safety officer is under investigation
11 and subjected to interrogation by his commanding officer, or any
12 other member of the employing public safety department, which
13 could lead to punitive action, such interrogation shall be con-
14 ducted under the following conditions. For the purpose of this
15 chapter, punitive action is defined as any action which may lead to
16 dismissal, demotion, suspension, reduction in salary, written repri-
17 mand, or transfer for purposes of punishment.

18 (a) The interrogation shall be conducted at a reasonable hour,
19 preferably at a time when the public safety officer is on duty, or
20 during the normal waking hours for the public safety officer,
21 unless the seriousness of the investigation requires otherwise. If
22 such interrogation does occur during off-duty time of the public
23 safety officer being interrogated, the public safety officer shall be
24 compensated for such off-duty time in accordance with regular
25 department procedures, and the public safety officer shall not be
26 released from employment for any work missed.

27 (b) The public safety officer under investigation shall be
28 informed prior to such interrogation of the rank, name and com-
29 mand of the officer in charge of the interrogation, the interro-
30 gating officers, and all other persons to be present during the
31 interrogation. All questions directed to the public safety officer
32 under interrogation shall be asked by and through no more than
33 two interrogators at one time.

34 (c) The public safety officer under investigation shall be
35 informed of the nature of the investigation prior to any interroga-
36 tion.

37 (d) The interrogating session shall be for a reasonable period
38 taking into consideration gravity and complexity of the issue
39 being investigated. The person under interrogation shall be
40 allowed to attend to his own personal physical necessities.

41 (e) The public safety officer under interrogation shall not be
42 subjected to offensive language or threatened with punitive action,
43 except that an officer refusing to respond to questions or submit to
44 interrogations shall be informed that failure to answer questions
45 directly related to the investigation or interrogation may result in
46 punitive action. No promise of reward shall be made as an induce-
47 ment to answering any question. The employer shall not cause the
48 public safety officer under interrogation to be subjected to visits
49 by the press or news media without his express consent nor shall
50 his home address or photograph be given to the press or news
51 media without his express consent.

52 (f) The complete interrogation of a public safety officer may be
53 recorded. If a tape recording is made of the interrogation, the
54 public safety officer shall have access to the tape if any further
55 proceedings are contemplated or prior to any further interrogation
56 at a subsequent time. The public safety officer shall be entitled to

57 a transcribed copy of any notes made by a stenographer or to any
58 reports or complaints made by investigators or other persons,
59 except those which are deemed by the investigating agency to be
60 confidential. No notes or reports which are deemed to be confi-
61 dential may be entered in the officer's personnel file. The public
62 safety officer being interrogated shall have the right to bring his
63 own recording device and record any and all aspects of the inter-
64 rogation.

65 (g) If prior to or during the interrogation of a public safety
66 officer it is deemed that he may be charged with a criminal
67 offense, he shall be immediately informed of his constitutional
68 rights.

69 (h) Upon the filing of a formal written statement of charges, or
70 whenever an interrogation focuses on matters which are likely to
71 result in punitive action against any public safety officer, that
72 officer, at his request, shall have the right to be represented by a
73 representative of his choice who may be present at all times
74 during such interrogation. The representative shall not be a person
75 subject to the same investigation. The representative shall not be
76 required to disclose, nor be subject to any punitive action for
77 refusing to disclose, any information received from the officer
78 under investigation for noncriminal matters.

79 This section shall not apply to any interrogation of a public
80 safety officer in the normal course of duty, counseling, instruction,
81 or informal verbal admonishment by, or other routine or
82 unplanned contact with, a supervisor or any other public safety
83 officer, nor shall this section apply to an investigation concerned
84 solely and directly with alleged criminal activities.

85 (i) No public safety officer shall be loaned or temporarily reas-
86 signed to a location or duty assignment if a sworn member of his
87 department would not normally be sent to that location or would
88 not normally be given that duty assignment under similar circum-
89 stances.

90 (j) Upon completion of the investigation, the law enforcement
91 officer shall be notified of the name of any witness and all charges
92 and specifications against the officer not less than 10 days prior to
93 any hearing.

94 (k) In addition, the law enforcement officer under investigation
95 shall be furnished with a copy of the investigatory file and any
96 exculpatory information, but excluding:

- 97 1. The identity of confidential sources;
- 98 2. Any nonexculpatory information; and
- 99 3. Recommendations as to charges, disposition, or punishment.

100 (1) The law enforcement officer under investigation shall be
101 furnished with a copy of the investigatory file and the exculpatory
102 information described under subparagraph (iii) of this paragraph
103 not less than 10 days before any hearing if the officer and the offi-
104 cer's representative agree:

105 1. To execute a confidentiality agreement with the law enforce-
106 ment agency to not disclose any of the material contained in the
107 record for any purpose other than to defend the officer; and

108 2. To pay any reasonable charge for the cost of reproducing the
109 material involved.

110 (m) The law enforcement officer under interrogation may not
111 be threatened with transfer, dismissal, or disciplinary action.

112 (n) Unless otherwise required or conducted on a routine basis,
113 no law enforcement officer shall be required to submit to blood
114 alcohol tests, blood, breath, or urine tests for controlled sub-
115 stances, polygraph examinations or interrogations which specifi-
116 cally relate to the subject of the investigation. The results of any
117 such test are not admissible or discoverable in any criminal or
118 civil proceeding against the law enforcement officer, when said
119 officer has been ordered to submit thereto.

120 (o) If the chief is the law enforcement officer under investiga-
121 tion, the chief of another law enforcement agency in this State
122 shall function as the law enforcement officer of the same rank on
123 the hearing board.

124 1. If the chief of a State law enforcement agency is under inves-
125 tigation, the Governor shall appoint the chief of another law
126 enforcement agency as the law enforcement officer of the same
127 rank on the hearing board.

128 2. If the chief of a county or municipal law enforcement agency
129 is under investigation, the official who may appoint the chief's
130 successor shall appoint the chief of another law enforcement
131 agency as the officer of the same rank on the hearing board.

132 3. If the chief of a State law enforcement agency or the chief of
133 a county or municipal law enforcement agency is under investiga-
134 tion, the official who may appoint the chief's successor, or that
135 official's designee, shall function as chief for the purposes of this
136 subtitle.

137 Section 3. (a) No evidence may be obtained, received or
138 admitted into evidence in any proceeding of any disciplinary
139 action which violates any of the rights established by the United
140 States Constitution or Constitution or by this chapter. The tribunal
141 may not enter any judgment or sustain any disciplinary action
142 based on any evidence obtained in violation of the officer's rights
143 as contained in this chapter.

144 (b) Any decision, order or action taken following the hearing
145 shall be in writing and shall be accompanied by findings of fact.
146 The findings shall consist of a concise statement upon each issue
147 in the case. A copy of the decision or order accompanying find-
148 ings and conclusions along with the written action and right of
149 appeal, if any, shall be delivered or mailed promptly to the law
150 enforcement officer or to his or her attorney or representative of
151 record.

152 Section 4. No law enforcement officer shall be compelled to
153 work extra duty without compensation as a penalty for a discipli-
154 nary infraction. No suspension for any period of time provided in
155 departmental rules and regulations shall affect the law enforce-
156 ment officer's eligibility for pension, hospitalization, medical and
157 life insurance coverage or other benefits specifically protected
158 under his or her contract of employment. Suspension may affect
159 time of pension eligibility by contractual provision or other statu-
160 tory provision. Nothing herein shall prevent any law enforcement
161 agency from requiring reimbursement by a suspended law
162 enforcement officer of his or her employee contribution to his or
163 her benefits during his or her time of suspension.

164 Section 5. No public safety officer shall be required or
165 requested for purposes of job assignment or other personnel action
166 to disclose any item of his property, income, assets, source of
167 income, debts or personal or domestic expenditures (including
168 those of any member of his family or household) unless such
169 information is obtained or required under state law or proper legal
170 procedure, tends to indicate a conflict of interest with respect to
171 the performance of his official duties, or is necessary for the
172 employing agency to ascertain the desirability of assigning the
173 public safety officer to a specialized unit in which there is a strong
174 possibility that bribes or other improper inducements may be
175 offered.

176 Section 6. No public safety officer shall have his locker, or
177 other space for storage that may be assigned to him searched
178 except in his presence, or with his consent, or unless a valid
179 search warrant has been obtained or where he has been notified
180 that a search will be conducted. This section shall apply only to
181 lockers or other space for storage that are owned or leased by the
182 employing agency.

183 Section 7. (c) Evidence which possesses probative value com-
184 monly accepted by reasonable and prudent persons in the conduct
185 of their affairs shall be admissible in evidence and given probative
186 effect. The tribunal conducting the hearing shall give effect to the
187 rules of privilege recognized by law and exclude incompetent,
188 irrelevant, immaterial and unduly repetitious evidence. All records
189 and documents which any party desires to use shall be offered and
190 made a part of the record. Documentary evidence may be received
191 in the form of copies of excerpts or by incorporation by reference.

192 (d) Every party shall have the right of cross-examination of wit-
193 nesses who testify and may submit rebuttal evidence.

194 (e) The tribunal may take notice of judicially cognizable facts
195 and in addition may take notice of general, technical or scientific
196 facts within its specialized knowledge. Parties shall be notified
197 beforehand of the materials so noticed by the trial board. No law
198 enforcement officer may be adjudged guilty of any offense unless
199 the hearing tribunal is satisfied that guilt has been established by
200 substantial evidence.

201 Section 8. A law enforcement agency may not prohibit sec-
202 ondary employment but may promulgate reasonable regulations as
203 to a law enforcement officer's secondary employment.

204 Section 9. The rights established by the provisions of this
205 chapter shall not be diminished or abridged by any local ordinance
206 or collective bargaining agreement.